



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,670	09/05/2003	Will Wood	40124/02301	1719
30636	7590	11/30/2006	EXAMINER	
FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038			DAVIS, JENNA L	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/656,670	Applicant(s) WOOD ET AL.	
	Examiner Jenna Davis	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 7-18 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 7-18, and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the international Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/6/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendment filed on September 6, 2006, has been entered. Claims 1, 5, 11, and 25 have been amended. Claims 2-4 are cancelled. Claims 1, 5, 7-18, and 22-26 are pending with claims 20 and 21 withdrawn from consideration.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 7-18, and 22-26 are rejected under 35 U.S.C. 103(a) as obvious over the combination of Ootani (JP 55115440) and Trinh (US 5429628)

Both Ootani and Trinh are directed to odor controlling fiber materials. Ootani teaches providing zinc particles of a size less than one micron to the fibers disclosed therein while Trinh teaches providing cyclodextrine of the type claimed here in the materials. With regard to claim 1, Trinh et al. disclose a material comprising fibers (column 6, lines 45-58) and particles of cyclodextrin dispersed throughout (Abstract). The particles, while not being dispersed within

Art Unit: 1771

each individual fiber, are dispersed within the fibers as a group. With regard to claim 8-10, the topsheet may be constructed of polypropylene fibers (column 10, lines 58-60) and the cyclodextrin may be dispersed throughout the topsheet (column 7, line 7). With regard to claims 11 and 25, the cyclodextrin may be used in an amount of 1% by weight of the fibers (See Example 7). With regard to claim 13, the cyclodextrin may comprise an alkyl ether group (column 15, lines 19-27). With regard to claim 16, the silyl ether group is not required in the claims. With regard to claim 17, the substrate may be spunbonded (column 10, line 45). With regard to claim 18, the cyclodextrin may be dispersed uniformly (column 14, lines 46). With regard to claims 22-24, Trinh et al. disclose the particles may be found in the absorbent core or the topsheet of a diaper (column 3, lines 46-50).

It would have been obvious to a person having ordinary skill in the art to have provided the odor controlling agents of Ootani and Trinh in fibers in order to optimize the odor controlling properties of the two materials.

Although Trinh et al. do not explicitly teach the limitation of low moisture content, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. cyclodextrin) and in the similar production steps (i.e. dispersed in the fibrous substrate) used to produce the fabric. The burden is upon the Applicant to prove otherwise. In re Fitzgerald, 205 USPQ 594. In the alternative, the claimed low moisture content would obviously have been provided by the process disclosed by Trinh et al. Note In re Best, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103.

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ootani and Trinh et al. in view of Wood et al. (U.S. Patent No. 5,776,842).

With regard to claims 12-16, Trinh et al. do not teach all the possible substituents that the cyclodextrin material can comprise. Wood et al. teach cyclodextrin material that contains all the various claimed substituents (column 8, line 35 - column 10, line 62). Wood et al. teach that substituents can be placed on a cyclodextrin to provide uniform dispersion on a substrate (column 8, lines 15-20). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use the moieties taught by Wood et al. in the cyclodextrin of Trinh et al. in combination with the zinc particles of Ootani in order to provide cyclodextrin material that can better interact with polymer and provide uniform dispersion on a substrate, as taught by Wood et al.

With regard to claim 12, although Wood et al. do not explicitly teach the limitation of low moisture content for their cyclodextrin material, it is reasonable to presume that said limitations are inherent to the combination of using the cyclodextrin of Wood et al. in the product of Ootani as modified by Trinh et al. Support for said presumption is found in the use of similar materials (i.e. cyclodextrin with similarly claimed moieties) and in the similar production steps (i.e. dispersed in the fibrous substrate) used to produce the fabric. The burden is upon the Applicant to prove otherwise. In re Fitzgerald, 205 USPQ 594. In the alternative, the claimed low moisture content would obviously have been provided by the process disclosed by Wood et al.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

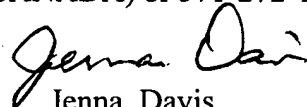
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna Davis whose telephone number is 571-272-3357. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jenna Davis
Primary Examiner
Art Unit 1771

jld